

person won't collect \$200,000; he won't collect a dime. But the other one happens to have been exposed by a company that is still in existence and has money, or insurance, they can collect the full \$200,000.

That is happening today.

To make it crystal clear, I will ask you about an automobile accident. Have you ever heard of people who have been run into, have an automobile accident as a result of a drunk driver who is uninsured and somebody is injured, they say, I am going to sue them and I am going to get a \$1 million verdict. You know what the lawyer says? Does the defendant have any money? Well, no. Does he have any insurance? No. What does he have? He has a rental, that is the only car he had, it is a piece of junk, and it is not worth anything. The lawyer says: If you get a \$50 million verdict, you will not collect one dime. It is not worth the trouble to go to court over.

This happens in America. It is the way the law is.

But this trust fund says whether the company that exposed them and injured them is in existence or is not, they will be able to recover too out of a uniform trust fund. And companies that are bankrupt will be able to pay at a level that allows them to stay in business and continue to pay into the trust fund.

Seventy-seven companies are already bankrupt. They say: Well, we are going to make more companies pay. We are going to make more companies pay than are supposed to pay—somehow make them pay more than they are supposed to pay. But let me say this to my colleagues or anyone who may be listening. Now there are 8,400 companies being sued, being dragged in, and many of them have the most tenuous exposure.

I remember very vividly a man coming into my office. He bought a company that at one time sold asbestos and had not sold asbestos for many years before he bought it. He buys it and makes it a part of his company. The next thing he knows, all of them are beginning to go at that little company as a defendant which he bought, and he is liable for it. Money is being sucked out of his whole, big company and going into this fund.

These companies realize that. They may not be the main target today, but the clever and sophisticated and determined plaintiff lawyers have demonstrated a capacity to add on companies and make them liable more than they were before. Many companies are willingly prepared to pay into this fund so they won't be sued for the rest of their existence; so when they go to a stockholders' meeting and write a prospectus which shows what their liabilities are, they can say exactly what their asbestos liability is rather than being required to list 5,000 asbestos cases filed against them.

Somebody may say: How much is that going to cost? Well, we don't

know. Well, could it be \$1 million each? Well, we do not know. We don't think so. I may not want to invest in your company. I may not want to buy stock in your company. I have to have some more certainty about how much you are going to pay.

That is one of reasons we are trying to pass this trust fund, so the defendant companies can say to their stockholders and would-be investors and those who would contract with them what their future financial prospects are.

Isn't that a good public policy thing to try to do?

Veterans, if we don't pass this bill, you are not going to be able to recover. Most of them have nobody to sue. You can't sue the Federal Government for this. A lot of other people already have found that the people they are entitled to sue by law either have no money or no longer exist.

I will say this: I think the legislation is headed in the right direction. I believe that Senator COBURN is correct. We need to watch this criteria. If we get that wrong, it can take this bill down. A doctor knows that thousands of Americans every day who are not exposed to asbestos get colorectal cancer or get throat cancer or get prostate cancer.

If somehow anybody who had any exposure to asbestos is not going to be able to come into the fund and demand that the fund pay them for cancer which they may have been genetically predisposed to, whether or not they have been exposed to asbestos, we have done something that is dangerous and the fund may not be able to survive.

The Congressional Budget Office says this fund, as rewritten, will survive. But I believe it could be tightened up to make it better. I believe that the fund has a chance to be viable throughout its entire life and fulfill its promise because we have done a better job in recent years in dealing with exposure to asbestos.

There has been a sea of change in what has happened. In earlier days, the companies did not warn the people who would be using their product about how dangerous it was. Even after they knew it was dangerous, they didn't warn them. Now everybody is warned. For 30 years, maybe 35 years, there has been exceedingly great care utilized when asbestos is about. You see people with masks on and all of that.

I think it is logical to assume that we will continue to see a decline in the claims and also this bill will take out the unjustified claims. Claims of people who have not been given any disability or sickness, even though they have been exposed and they get sick, they will be paid. If they don't get sick, they won't be paid.

That will reduce a lot of the claims. It will come down to people with legitimate illness. If a person comes in with that most grievous disease, mesothelioma, which is generally a fatal disease, this would entitle them to claim

\$1.1 million dollars, be able to have half of it paid in 30 days and the other half in 6 months.

Today, they do not know what they will get, and most of the claimants are deceased before money is recovered.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2747, AS MODIFIED

Mr. FRIST. Mr. President, I ask unanimous consent that amendment No. 2747 be modified with the change at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2747), as modified, is as follows:

On the appropriate page, insert the following and number accordingly:

GUIDELINES.—In determining which defendant participants may receive inequity adjustments the Administrator shall give preference in the following order:

(A) Defendant participants that have significant insurance coverage applicable to asbestos claims, such that on the date of enactment, 80 percent or more of their available primary insurance limits for asbestos claims remains available.

(B) Defendant participants where, pursuant to the guidance set forth in section 404(a)(2)(E), 75% of its prior asbestos expenditures were caused by or arose from premise liability claims.

(C) Defendant participants who can demonstrate that their prior asbestos expenditures is inflated due to an unusually large, anomalous verdict and that such verdict has caused the defendant to be in a higher tier.

(D) Any other factor deemed reasonable by the Administrator to have caused a serious inequity.

In determining whether a company has significant insurance coverage applicable to asbestos claims, such that on the date of enactment, 80% or more of their available primary insurance limits for asbestos claims remains available, the Administrator shall inquire and duly consider:

(1) The defendant participant's expected future liability in the tort system and accordingly the adequacy of insurance available measured against future liability.

(2) Whether the insurance coverage is uncontested, or based on a final judgment or settlement.

MORNING BUSINESS

Mr. FRIST. I ask unanimous consent there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATOR SALAZAR'S MOTHER

Mr. REID. Mr. President, this afternoon, I rise to extend the thoughts and prayers of the entire Senate to Senator KEN SALAZAR who left the Capitol last night to be with his mother, Emma.